

**FEDERAL MARITIME COMMISSION**

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**DOCKET NO. 14-02**

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**OCEANIC BRIDGE INTERNATIONAL, INC. –  
POSSIBLE VIOLATIONS OF SECTION 10(a)(1)  
OF THE SHIPPING ACT OF 1984**

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**BUREAU OF ENFORCEMENT'S  
RESPONSE TO THIRD ORDER TO SUPPLEMENT**

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The Bureau of Enforcement (BOE) submits this response to the Third Order To Supplement The Record (Order) issued by the Administrative Law Judge (ALJ) on September 24, 2014, directing BOE to respond to five questions set forth therein.<sup>1</sup> Specific responses to those questions are provided in the appended Supplemental Verified Statement of Michael F. Carley, whose prior verified statement in this proceeding gave rise to the questions posed by the ALJ.

Mr. Carley's prior verified statement addressed whether Respondent, by accessing the Maersk/Dalian Haiqiao contract to which it was not a party, obtained transportation at less than the applicable rates provided in its own contracts with Maersk. To that end, Mr. Carley compared the rates and charges obtained by Respondent with those that it should have paid and

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<sup>1</sup> By Order Enlarging Time To Respond served October 8, 2014, the ALJ extended BOE's response date to October 17, 2014.

concluded that Respondent obtained transportation at less than the applicable rates and charges on each of the 49 shipments in issue. A shipment-by-shipment analysis was summarized and appended as Attachment A to his statement.

The ALJ's Order questions whether the applicable rates and charges specified in Mr. Carley's statement accurately reflect those in effect on the "gate-in dates" as required by the Maersk/Oceanic Bridge contracts.<sup>2</sup> Noting that "gate-in date" is not defined in any of the contracts nor referred to as the governing date in the re-rating analysis previously submitted, the Order inquires of BOE the meaning of such date, whether it differs from the dates used in the re-rating process, and if so, the effect of applying those dates on the ultimate determination of the applicable rates and charges.

As explained in the appended Supplemental Verified Statement, Mr. Carley elicited the information requested in the Order directly from Maersk, the contracting ocean common carrier. Maersk has advised that "gate-in" refers to the date on which Maersk receives possession of the container for transportation, a date which is generally earlier than the bill of lading issuance date reflected by Maersk on its bills.

Mr. Carley then employed the respective "gate-in date" for each shipment, as provided by Maersk, in order to review and, where applicable, re-rate each of the 49 shipments based on the applicable rates and charges then in effect. In the majority of shipments, application of the gate-in date resulted in no change to the applicable rate or charge reflected in Mr. Carley's original analysis. In 19 instances, the governing gate-in date produced increases and decreases to either the base ocean freight rate or the bunker adjustment factor. A revised shipment-by-

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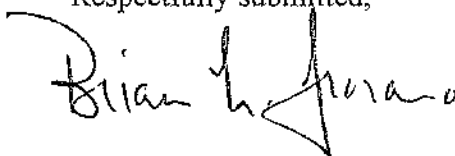
<sup>2</sup> The Maersk/Dalian Haiqiao contracts likewise refer to the gate-in dates for determination of the applicable rate on a given shipment.

shipment analysis, employing the prescribed gate-in dates, is appended as Supplemental Attachment A to his statement.

In no case did any change result whereby those rates and charges that should have been assessed under the Maersk/Oceanic Bridge contracts would be less than or equal to the rates and charges actually obtained by Respondent under the Maersk/Dalian Haiqiao contracts. As supplemented, the record continues to establish that, by accessing contracts to which it was not a party, Respondent violated section 10(a)(1) by obtaining ocean transportation at less than the rates or charges that would otherwise apply.

BOE appreciates the opportunity to ensure that the record includes the most accurate assessment of the rates and charges otherwise applicable to the nineteen (19) shipments affected thereby.

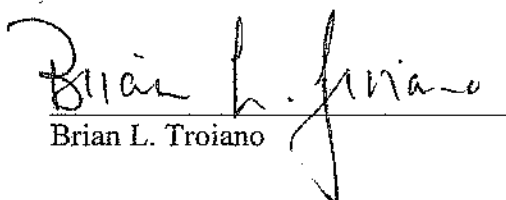
Respectfully submitted,



Peter J. King, Director  
Brian L. Troiano, Deputy Director  
Bureau of Enforcement  
Federal Maritime Commission  
800 N. Capitol St., N.W.  
Washington D.C. 20573-0001  
(202) 523-5783

#### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing document was served upon Oceanic Bridge International, Inc., 18725 E. Gale Ave., #233, City of Industry, CA 91748, by first class U.S. mail with postage prepaid this 17th day of October, 2014.

  
Brian L. Troiano

**FEDERAL MARITIME COMMISSION**

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**DOCKET NO. 14 - 02**

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**OCEANIC BRIDGE INTERNATIONAL, INC. –  
POSSIBLE VIOLATIONS OF SECTIONS 10(a)(1)  
OF THE SHIPPING ACT OF 1984**

**SUPPLEMENTAL VERIFIED STATEMENT  
OF  
MICHAEL F. CARLEY**

1. My name is Michael F. Carley. I previously submitted a verified statement in this proceeding in support of the Motion For Decision On Default filed by the Bureau of Enforcement (BOE). I submit this supplemental verified statement to respond to the five questions posed by the Administrative Law Judge (ALJ) in the Third Order To Supplement The Record issued September 24, 2014 (Order).
2. In my prior statement, based on my shipment-by-shipment analysis, I concluded that by improperly accessing service contracts to which it was not a party Respondent obtained transportation on the 49 shipments in issue at less than the applicable rates and charges. (Prior Verified Statement, ¶10). The ALJ's Order questions whether my analysis of the applicable rates and charges accurately gauges the effects of certain "gate-in dates" upon those rates and charges to be applied under the applicable contracts, and consequently whether Respondent in fact obtained transportation at less than the applicable rates and charges.
3. As explained in detail below, I reviewed and, where appropriate, re-rated all 49 shipments according to the rates and charges in effect on the "gate-in dates" provided by Maersk for each shipment. On the majority of shipments (30), the "gate-in date" produces no change to the applicable rates and charges set forth in Attachment A to my prior statement. With respect to the remaining 19 shipments, application of the "gate-in date" results in both increases and decreases to the applicable rates and charges and resulting rate benefit shown in my prior statement. In all cases the rates and charges actually obtained by Respondent under the Maersk/Dalian Haiqiao contracts remain less than the applicable rates and charges to be assessed for these 49 shipments, even where adjusted for the gate-in date.

4. As the ALJ notes, the term “gate-in date” is not defined in the Maersk service contracts, nor is it addressed in any of the other documents obtained and submitted in this proceeding. It is my experience that such a date, defined as such, does not appear on typical shipment documentation issued by carriers.

In order to respond to the questions posed, I spoke with Mr. Dennis O'Brien, Associate General Counsel, Maersk, Inc., based in Charlotte, NC to determine the meaning of the term “gate-in date” as employed by Maersk in its service contracts. Mr. O'Brien informed me that on single container shipments, the term means the date on which Maersk receives possession of the container for transportation. On multiple container shipments it is the date on which the final container in the entire shipment is received. In this respect, counsel's explanation is consistent with Maersk's tariff No. 427, the governing tariff for Maersk's contracts with Oceanic Bridge, which provides that the applicable rates for shipments received by the carrier are those in effect on the date of receipt and that a shipment is not considered received until the full bill of lading quantity has been received.

5. Although the “gate-in date” is not reflected on any of the documents collected from Maersk or Respondent, Maersk maintains an internal equipment tracking database which identifies the date of receipt for the containers that it transports. At my request, Mr. O'Brien furnished the gate-in dates corresponding to the Maersk bill of lading numbers for each shipment at issue in this proceeding. Those dates of receipt are identified in the attachment to this statement.
6. In response to question 2 in the Order, the “gate-in date” is not the date shown in my original Attachment A column entitled “Date of B/L”, as in all cases the date of receipt is earlier than the date shown on the Maersk bill of lading.
7. In response to question 3, the “gate-in date” does not appear elsewhere in the record nor in any of the shipping documents previously collected in our investigation of Oceanic Bridge.
8. In response to question 4, I employed the respective “gate-in date” for each shipment provided by Maersk in order to review and, where applicable, re-rate each of the 49 shipments based on the applicable rates and charges then in effect. As noted, most shipments do not involve any change. On those shipments in which a change resulted from application of an earlier “gate-in date”, there was an increase or decrease in either the base rate or the bunker adjustment factor (BAF). No other charges were affected.
9. In response to question 5, the source of the applicable BAF is Rule Name – Bunker Adjustment Factor, in Maersk tariff No. 427, MAEU-427. The Maersk/Oceanic Bridge contracts and the Maersk/Dalian Haiqiao contracts identify MAEU-427 as the governing base rate tariff.

10. My revised analysis is appended hereto as Supplemental Attachment A. Each column, labeled by its heading, is explained as follows:

Maersk B/L No.- Identifies Maersk bill of lading number. This information is identical to the column of same name in Attachment A to my prior statement.

Date of B/L- Identifies date of issuance of Maersk bill. This information is identical to the column of same name in Attachment A to my prior statement. This column is shown only for comparison purposes to the original attachment, and was not employed in the re-ratings shown in Supplemental Attachment A.

Gate-In Date – This reflects the date each shipment was received by Maersk. All dates were provided by Maersk based on its internal equipment tracking database. These dates were employed in the re-ratings shown in Supplemental Attachment A.

Ocean Freight Charged – Reflects ocean freight originally charged to Respondent and paid. Identical to column of same name in Attachment A to my prior statement.

Original Applicable Charges – Reflects my original analysis showing the applicable rates and charges for each shipment. Identical to column headed “Applicable S/C Charges” in Attachment A to my prior statement.

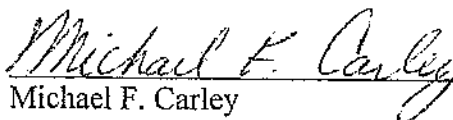
Applicable Charges Adjusted for Receipt Date - Identifies the shipments in which an increase or decrease in the base rate or the BAF resulted from application of the “gate-in date” and states the amended amount. Shipments not affected by the gate-in date are denoted “No Change”.

Basis For Adjustment – Identifies the amount of adjustment and states whether adjustment resulted from a change in the base rate or in the BAF.

Benefit Obtained - Stated as a rate benefit, this column shows the amount by which Respondent obtained transportation at less than the applicable charges on each shipment.

11. In all cases the rates and charges obtained by Respondent under the Maersk/Dalian Haiqiao contracts remain less than the applicable rates and charges to be assessed for these 49 shipments, even where adjusted for the gate-in date. Accordingly, I believe that Respondent obtained transportation at less than the rates or charges than would otherwise apply on each of the 49 shipments listed therein, in the respective amounts shown in Supplemental Attachment A .

I certify, under penalty of perjury, that the foregoing is true and correct.

  
Michael F. Carley

OCT. 16, 2014  
Date

**SUPPLEMENTAL ATTACHMENT A**

**OCEANIC BRIDGE INTERNATIONAL, INC.**

**RE-RATE SCHEDULE OF SHIPMENTS:**

<u>MAERSK B/L NO.</u>	<u>DATE OF B/L</u>	<u>GATE-IN DATE</u>	<u>Ocean Freight Charged (\$)</u>	<u>Original Applicable Charges (\$)</u>	<u>Applicable Charges Adjusted For Receipt Date (\$)</u>	<u>Basis for Adjustment:</u> <u>Rate and/or BAF Increase/ Decrease</u>	<u>Benefit Obtained</u>
MAEU582502041	12/8/2010	12/4/2010	2,140	2,640	No change	Not applicable	\$500
MAEU565537233	12/16/2010	12/10/2010	2,140	2,640	2,440	\$200 - Rate decrease	\$300
MAEU565537224	12/18/2010	12/14/2010	2,140	2,440	No change	Not applicable	\$300
MAEU565537214	12/18/2010	12/14/2010	1,632	1,875	No change	Not applicable	\$243
MAEU565537250	12/21/2010	12/16/2010	2,140	2,440	No change	Not applicable	\$300
MAEU559651196	1/2/2011	12/28/2010	2,140	2,440	No change	Not applicable	\$300
MAEU565537439	1/13/2011	1/7/2011	2,380	2,440	No change	Not applicable	\$60
MAEU565537458	1/14/2011	1/10/2011	2,380	2,440	No change	Not applicable	\$60
MAEU565537623	1/25/2011	1/22/2011	2,200	2,560	No change	Not applicable	\$360
MAEU565537537	1/27/2011	1/13/2011	2,380	2,440	No change	Not applicable	\$60
MAEU565537697	1/27/2011	1/21/2011	2,380	2,440	No change	Not applicable	\$60
MAEU565537823	2/1/2011	1/29/2011	1,220	1,420	No change	Not applicable	\$200
MAEU565537784	2/1/2011	1/27/2011	1,700	*1,900	No change	Not applicable	\$200
MAEU565539557	2/9/2011	1/27/2011	2,380	2,440	No change	Not applicable	\$60
MAEU562828434	3/3/2011	2/27/2011	8,300	*8,360	*8,600	\$240 - Rate increase	\$300
MAEU565537948	3/7/2011	2/28/2011	2,800	*2,900	No change	Not applicable	\$100
MAEU565538053	3/16/2011	3/12/2011	2,400	*2,505	No change	Not applicable	\$105
MAEU562828534	3/17/2011	3/10/2011	2,600	*2,650	No change	Not applicable	\$50
MAEU565538059	3/20/2011	3/13/2011	2,700	*2,750	No change	Not applicable	\$50
MAEU565538058	3/20/2011	3/13/2011	2,700	*2,920	*2,750	\$170 - BAF decrease	\$50
MAEU565538101	3/20/2011	3/14/2011	2,700	*2,920	*2,750	\$170 - BAF decrease	\$50
MAEU565538170	3/22/2011	3/18/2011	1,000	*1,105	No change	Not applicable	\$105
MAEU565574462	3/24/2011	3/21/2011	5,200	*5,640	*5,300	\$170 x 2 - BAF decrease	\$100
MAEU565538169	3/24/2011	3/20/2011	2,063	*2,220	*2,090	\$130 - BAF decrease	\$27
MAEU565538153	3/24/2011	3/19/2011	2,063	*2,220	*2,090	\$130 - BAF decrease	\$27

MAEU565538171	3/30/2011	3/25/2011	2,600	*2,820	*2,650	\$170 - BAF decrease	\$50
MAEU565538154	3/30/2011	3/26/2011	2,700	*2,920	*2,750	\$170 - BAF decrease	\$50
MAEU562828474	4/1/2011	3/4/2011	2,700	*2,720	*2,800	\$80 - Rate increase	\$100
MAEU565574537	4/2/2011	3/29/2011	2,700	*2,990	*2,750	\$70-Rate, \$170-BAF decrease	\$50
MAEU565541295	4/2/2011	3/28/2011	2,700	*2,990	*2,750	\$70-Rate, \$170-BAF decrease	\$50
MAEU565541296	4/2/2011	3/29/2011	3,120	*3,450	*3,190	\$90-Rate, \$170-BAF decrease	\$70
MAEU565541378	4/6/2011	4/2/2011	2,000	*2,530	No change	Not applicable	\$530
MAEU565539156	4/6/2011	3/31/2011	2,600	*2,890	*2,650	\$70-Rate, \$170-BAF decrease	\$50
MAEU565541396	4/6/2011	3/31/2011	3,120	*3,450	*3,190	\$90-Rate, \$170-BAF decrease	\$70
MAEU565574564	4/7/2011	4/2/2011	2,700	*2,990	No change	Not applicable	\$290
MAEU565541526	4/16/2011	4/9/2011	3,120	*3,450	No change	Not applicable	\$330
MAEU565541544	4/16/2011	4/11/2011	2,700	*2,990	No change	Not applicable	\$290
MAEU553849917	4/18/2011	3/11/2011	2,700	*2,990	*2,750	\$70-Rate, \$170-BAF decrease	\$50
MAEU565541593	4/19/2011	4/15/2011	2,700	*2,990	No change	Not applicable	\$290
MAEU565541537	4/19/2011	4/15/2011	2,600	*2,890	No change	Not applicable	\$290
MAEU565541563	4/19/2011	4/15/2011	2,063	*2,275	No change	Not applicable	\$212
MAEU565541706	4/30/2011	4/26/2011	2,063	*2,275	No change	Not applicable	\$212
MAEU565574836	4/30/2011	4/26/2011	2,600	*2,890	No change	Not applicable	\$290
MAEU565541756	4/30/2011	4/26/2011	2,700	*2,990	No change	Not applicable	\$290
MAEU565574868	5/7/2011	4/29/2011	2,063	*2,515	*2,275	\$240 - Rate decrease	\$212
MAEU565574803	5/13/2011	5/6/2011	1,090	1,290	1,340	\$50 - Rate increase	\$250
MAEU565574996	5/17/2011	5/14/2011	1,090	1,290	No change	Not applicable	\$200
MAEU562164516	5/19/2011	5/6/2011	2,310	2,410	2,500	\$90 - Rate increase	\$190
MAEU562164647	5/26/2011	5/21/2011	1,805	1,850	No change	Not applicable	\$45

\* Amount includes base rate plus Bunker Adjustment Factor (BAF). On these shipments, Maersk's original bill did not separately assess the BAF.